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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

RECEIVED
JUN 16 2016
SC Court of Appeals

Case No. 2013-CP-07-2251

Nell Barnwell Hay and Edward Barnwell,

Respondents,

v.

Chauncey N. Brown-Barnwell, Janice Barnwell, Bank of New York, Trust Under Agreement Dated 12/1/1 (EQCC Trust 2001-2) and all Persons claiming right, title, estate interest in or lien upon the real estate described, and any known heirs or persons being as a class identified as John Doe, whose true names are unknown, and any unborn infants or persons under disability being a class designated as Richard Roe, whose true names are unknown, Defendants

Of whom Chauncey N. Brown-Barnwell and Janice Barnwell are the

Appellants.

MEMORANDUM ADDRESSING ISSUE OF APPEALABILITY

Drake H. Kaiser, Esq.
Post Office Box 212940
Columbia, South Carolina 29221
(803) 394-2107
Attorney for Respondents

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CASES

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<i>Mid-State Distribs. v. Century Importers, Inc.</i> , 310 S.C. 330, 426 S.E.2d 777 (1993)	4

STATUTES

S.C. Code Ann. § 14-3-330	4, 5
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STATEMENT OF PRELIMINARY ISSUE

1. IS THE COURT'S ORDER OF APRIL 22, 2016, GRANTING THE MOTION TO ENFORCE SETTLEMENT AN APPEALABLE ORDER?

STATEMENT OF THE CASE FOR PURPOSES OF THIS MEMORANDUM

On September 16, 2013, Respondents Ed Barnwell and Nell Hay brought an action to quiettitle to certain real property in Beaufort County, said title clouded by Appeallant Chauncey N. Brown-Barnwell filing certain soi-disant quitclaim deeds.

On August 7, 2015, all parites attended court-ordered mediation, resulting in a mediated agreement. Said agreement provided for a second session of mediation if needed.

The second session of mediation was held on December 9, 2015. The prior mediated agreement was executed at this time, and the parties negotiated an addendum clarifying certain aspects of the prior mediated agreement. The mediated agreement and addendum fully settled the issues between the parties.

Full settlment having been achieved, the mediator filed Proof of ADR on December 17, 2015. The Court subsequently dismissed the action based on the mediator's report on January 4, 2016.

Appleants sought no appeal or reconsideration of the Court's dismissal.

Appellant Chauncey N. Brown-Barnwell performed some of the promised actions under the mediated agreement, including executing revocations of two (2) of the three (3) soi-disant quitclaim deeds that clouded title to the real property. He refused to execute the third and final revocation. Seeking execution of the last remaining quitclaim deed, Respondents filed a Moiton for Specific Peformance and Enforcement of Mediation Agreement on February 18, 2015, said motion heard on on March 30, 2016, resulting in the Order of April 22, 2015, from which the instant appeal is taken (hereinafter "Mullen's Order").

Respondents are providing this memorandum pursuant to the request of the Clerk of the Court of Appeals dated June 6, 2016.

This memorandum is intended only to address the issue of appeability, and should not be construed as Respondent's brief pursuant to Rule 208, SCACR.

ARGUMENTS

1. MULLEN'S ORDER IS NOT APPEALABLE BECAUSE IT IS NOT A FINAL JUDGMENT.

The Appellate Court is empowered to review upon appeal final judgments. S.C. Code Ann. § 14-3-330(1). See also S.C. Code Ann. § 14-8-200. A final judgment “must finally determine some substantial matter forming the whole or a part of some cause of action or defense.” *Mid-State Distribs. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993). A final judgment results in a dismissal of an action.

In this instance, the Court did not finally determine any substantial matter forming the whole or a part of the parties' causes of action or defenses. Instead, the parties resolved the matter through mediated settlement, and the Court dismissed the case in reliance upon the mediator's report of case settlement.

Mullen's Order was handed down after dismissal of the case, pursuant to the Court's inherent jurisdiction to enforce settlement agreements. *Kumar v. Third Generation, Inc.*, 324 S.C. 284, 289, 485 S.E.2d 626, 629 (S.C. App., 1995).

Since not a final judgment, Mullen's Order is not appealable as such.

2. MULLEN'S ORDER IS NOT APPEALABLE BECAUSE IT IS NOT A FINAL ORDER AFFECTING A SUBSTANTIAL RIGHT.

The Appellate Court is empowered to review upon appeal “final order[s] affecting a substantial right...in any action after judgment.” SC Code Ann. § 14-3-330(3). The provisions of Section 14-3-330 are narrowly construed. *Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 708 (2005).

A substantial right, as defined in the empowering statute, is implicated when an order “in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action...grants or refuses a new trial or...strikes out an answer or any part thereof or any pleadings in any action.” SC Code Ann. § 14-3-330(2). *Hagood*, 362 S.C. at 195, 607 S.E.2d at 708.

In this instance, Mullen’s Order does not affect or determine the action. Resolution to the action was reached on December 9, 2015, through mediated settlement. The settlement itself determined the action, not Mullen’s Order.

Mullen’s Order does not prevent a judgment from which an appeal might be taken. Had Appellants wished to reach an appealable judgment of the Court, they should have made motion for reconsideration and/or appealed the Court’s dismissal of the action based on the parties’ settlement. They did not do so. Appellants’ failure to act then does not implicate a substantial right now.

Mullen’s Order does not discontinue the action. The action was already over.

Mullen’s Order does not grant or refuse a new trial.

Mullen’s Order does not alter any pleading in the action. All issues of the matter were previously resolved through mediation.

Since Mullen’s Order does affect any substantial right, said order is not appealable.

CONCLUSION

For the reasons stated, this Court should not review Mullen's Order on appeal, and the matter should be returned to the Beaufort Court for enforcement.

Respectfully submitted,

June 13, 2016



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(803) 394-2107
Attorney for Respondents

48 2016



KAISER REDDICK, llc

June 13, 2016

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Sent via USPS to:

South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

JUN 16 2016

SC Court of Appeals

RE: ***Hay v. Brown-Barnwell, 2016-001010***

Sir/Madam:

In response to the Clerk's letter of June 6, 2016 (attached), please find an original and one (1) copy of a Memorandum Addressing Issue of Appealability on behalf of the Respondents. I would appreciate your office filing the original and returning the certified copy to me. Please do not hesitate to call if you need anything further. I appreciate your assistance.

Also, by copy of this letter, I am serving Appellants with the same.

Regards,

Drake Kaiser *c/s*

Drake H. Kaiser, Esq.

Enclosures: *as above*

CC: Chauncey & Janice Barnwell



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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June 06, 2016

Chauncey N. Brown-Barnwell
98 Cemetery Rd.
Hilton Head Island SC 29926

Janice Barnwell
98 Cemetery Rd.
Hilton Head Island SC 29926

Re: Nell Barnwell Hay v. Chauncey N. Brown-Barnwell
Appellate Case No. 2016-001010

Dear Mr. Brown-Barnwell:

This Court has received your notice of appeal. A preliminary review of the order(s) challenged on appeal indicates it might not be appealable.

Accordingly, it is requested that both parties serve and file a memorandum addressing the issue of appealability within ten (10) days of the date of this letter. The time limits for perfecting the appeal are held in abeyance pending the Court's consideration of the memorandum.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Drake Hunter Kaiser, Esquire

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JUN 16 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
Nell Barnwell Hay and Edward Barnwell, Jr.)
Plaintiffs,)
vs.)
)
Chauncey N. Brown-Barnwell and)
Janice Barnwell)
Defendant.)
-----)

IN THE COURT OF APPEALS

CERTIFICATE OF SERVICE

Appellate Case No. 2016-001010

I, Drake H. Kaiser, Esq., an attorney of the law firm of Kaiser Reddick, LLC, do hereby certify that one copy of the below mentioned document(s) was/were duly served upon the person(s) listed below by depositing said paper(s) in the United States Mail, Columbia, South Carolina on the **June 13, 2016**, with the first class postage duly affixed and a return address clearly indicated on the envelope.

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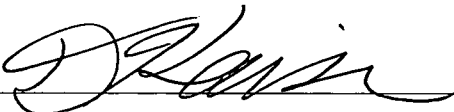
SC Court of Appeals

DOCUMENTS SERVED:

Memorandum Addressing Issue of Appealability

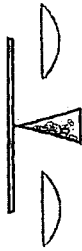
PERSON(S) SERVED:

Chauncey and Janice Barnwell
98 Union Cemetery Road
Hilton Head, SC 29926



Drake H. Kaiser, Esq.

Columbia, South Carolina

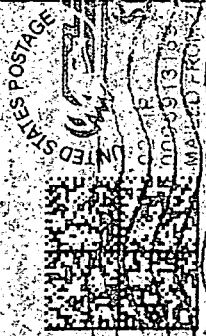


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